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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

KEVIN HALPERN,

Plaintiff,

v.

CITY OF SANTA CRUZ, ABRAHAM
RODRIGUEZ, DAVID PERRY, and
DOES 1 through 20, inclusive,

Defendants.

CASE NO. C 02-05557 JW

DECLARATION OF PLAINTIFF
KEVIN HALPERN IN OPPOSITION
TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OR IN THE
ALTERNATIVE, FOR SUMMARY
ADJUDICATION

Date: March 22, 2004
Time: 8:30 a.m.
Dept.: 8

I, KEVIN HALPERN, declare and state as follows:

1. I am the plaintiff in the above described action. The facts set forth herein are stated on my own personal knowledge and if called as a witness, I could and would competently testify to the facts contained herein under oath.

2. I am a 28-year-old white male. Other than the incident that serves the basis for this claim, I have never been arrested. I am a graduate of an Ivy League university and has never been involved in any way with any kind of substance abuse.

3. Early in the morning on January 8, 2002, I was scheduled to leave on a flight to New York from San Jose International Airport, so I could visit my family there. A friend of mine who was going to drive him to the airport was to pick me up at my girlfriend's house. Unfortunately, my girlfriend decided to break up with me at this

1 time. I therefore tried to contact my friend who was going to drive me to the airport on
2 my friend's cell phone, but my friend did not answer the phone. After several attempts
3 to call him, my ex-girlfriend and I agreed that I should start walking towards my friend's
4 house because she wanted to go to sleep. After I left, because of the cold weather, I
5 jogged occasionally, but I had a backpack with contents that included three heavy
6 communication technology books that prevented me from jogging the full way to my
7 friend's house. Therefore, my temperature and pulse were somewhat elevated. I
8 reached the gas station at the corner of Soquel and Frederick and again called my
9 friend to pick me up.

10 4. I then saw a police car approach and park in the gas station. Two officers
11 got out and began walking towards me, so I approached the first officer (RODRIGUEZ)
12 to explain why I was waiting at the intersection. I also informed the officer that I was
13 upset because my girlfriend had just broken up with me.

14 5. Despite this explanation, RODRIGUEZ continued to detain me. He
15 conducted a search for weapons, and found nothing. He then requested that I consent
16 to a search of my backpack. Having nothing to hide, I agreed. No weapons or
17 contraband were found. RODRIGUEZ nonetheless still continued to detain me,
18 purportedly to determine whether I was under the influence of a controlled substance.
19 He did not ask me any questions as to why my pulse and temperature might be slightly
20 raised. He did not ask why I was waiting at the corner. He did not ask me any
21 questions about my girlfriend and I breaking up, or why I might seem agitated or upset.
22 He did not ask me why I was "flailing my arms" or moving them in any way, or why I
23 was not wearing a heavy jacket. He never told me that I did not have to agree to a
24 search, or that I was free to leave. At no time was my behavior "erratic," nor did my
25 speech "fluctuate."

26 6. RODRIGUEZ asked me to tilt my head back and count out loud to 30. I
27 followed his directions and did what he asked me to do. He then shined a flashlight
28 into my eyes, apparently to measure my pupils, and took my pulse. PERRY also

1 shined a flashlight in my eyes.

2 7. RODRIGUEZ then told me he was arresting me, and he handcuffed me
3 and vigorously frisked him. I complained that RODRIGUEZ was hurting my left wrist.
4 RODRIGUEZ's response was to tighten the handcuffs until they could not move up or
5 down my arms at all. Many times throughout the rest of this ordeal, I explained that
6 the handcuffs were injuring his wrist, and asked that the officers loosen them. These
7 requests were completely ignored; throughout the time I was detained the handcuffs
8 were never loosened.

9 8. I was brought by the officers to Dominican Hospital through the
10 emergency room entrance. All the people in the emergency room were watching in
11 surprise as I was led in, handcuffed. Several individuals who had worked in the
12 emergency room for many years later told me that they had never seen anyone
13 brought in to the emergency room in handcuffs like that.

14 9. I asked that a hospital representative accompany him to observe the
15 treatment I was being accorded. The officers refused. They brought me to a room
16 and handcuffed me to the bed. Despite my complaints about my left wrist, the officers
17 kept one handcuff tightly secured to that wrist, with the other cuff attached to one of
18 the bedposts. RODRIGUEZ and PERRY again viewed my pupils. Then RODRIGUEZ
19 told me that they were not going to give me the urine and drug tests but were going to
20 release me instead.

21 10. Before they released me, RODRIGUEZ began filling out a Certificate of
22 Release form. At this point, overheard RODRIGUEZ ask PERRY for help in filling the
23 form out, stating that he had never filled one out before.

24 11. After removing the handcuffs, the officers took several pictures of me in
25 response to my statement that I was considering legal action in response to their
26 violations of my rights. RODRIGUEZ told me to smile for the picture, and when I failed
27 to do so, RODRIGUEZ moved close to my face and threatened to put the handcuffs on
28 again. When I continued to refuse to smile, RODRIGUEZ grabbed my arm as if to put

1 the handcuffs back on. I then agreed and produced a sickly smile for the picture.

2 12. After the officers released me, I stayed at Dominican Hospital in order to
3 proceed with the blood and urine examinations. The tests came out negative for all
4 controlled substances, as well as alcohol. A true and correct copy of the results of
5 these tests are attached hereto as Exhibit A.

6 13. My unlawful detention caused me significant embarrassment, mental
7 anguish, and emotional distress. I have been diagnosed with post traumatic stress
8 disorder and depression as a result of this incident and have undergone therapy in
9 order to cope with these disorders.

10 14. The officers' use of excessive force has caused significant injury to my left
11 wrist. I have been diagnosed with left wrist extensor tenosynovitis as a result of the
12 handcuffs being tightened so severely. This injury continues to cause me considerable
13 pain and makes it difficult for me to do common tasks such as writing, driving, typing,
14 turning door knobs, opening jars, eating, etc., as well as preventing him from enjoying
15 activities such as rock climbing, weight lifting and mountain biking.

16 I declare under penalty of perjury under the laws of the United States that the
17 foregoing is true and correct and that this declaration was executed on this 26th day of
18 February, 2004, at Santa Cruz, California.

19 /s/
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21 KEVIN HALPERN
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